

BILL ANALYSIS

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Department, Board Or Commission	Author	Bill Number
Franchise Tax Board	Jones	AB 1168

SUBJECT

Security of Social Security Numbers/FTB Truncate Social Security Numbers On Lien Abstracts And Any Other Records Created By The Board That Are Disclosable

SUMMARY

This bill would require Franchise Tax Board (FTB) to truncate social security numbers (SSNs) on liens or other documents made public.

The bill would also establish a task force to review the use of SSNs by post-secondary institutions in the state that do not impact FTB and are not discussed in this analysis.

PURPOSE OF BILL

According to the author's staff, the purpose of this bill is to remove SSNs from public documents to reduce the incidence of identity theft.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2008, and would be operative on or after that date.

ANALYSIS

STATE LAW

Under current state law, at the time an unpaid income or franchise tax debt becomes due and payable, the unpaid amount automatically gives rise to a perfected and enforceable state tax lien. A state tax lien attaches to all property and rights to property, including all after acquired property, belonging to the person located in California. Under the concept of "first in time, first in right," where liens are competing for an interest in the same parcel of real property, the lien recorded first in time takes priority over later recorded liens.

A county recorder is prohibited from altering any document submitted for recording.

Under current state law, state agencies are prohibited, with exceptions, from the following:

- Publicly posting or displaying an individual's SSN;
- Printing an individual's SSN on any card required to access products or services;
- Requiring an individual to transmit his or her SSN over the Internet unless the connection is secure or the SSN is encrypted;

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- Requiring an individual to use his or her SSN to access an Internet website unless a password or unique personal identification number is also required to access the website; and
- Printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document.

Documents required to be recorded, such as state tax liens, are expressly exempt from current limitations in state law relating to the use of SSNs. Additionally, current law does not prohibit FTB from using an individual's SSN as an internal identifier, including SSNs on documents mailed to third parties such as garnishments and levies.

The California Public Records Act (PRA) is designed to give the public access to information in possession of public agencies to the extent that information is a public record. Personal information that would identify an individual, such as an SSN, is exempt from disclosure under the PRA.

THIS BILL

This bill would make changes to the way state, county, and all local levels of government make documents that may contain an SSN available to the public.

On the state level, the bill would prohibit state agencies from filing or recording documents with a local agency that contains more than the last four digits of an SSN. Unless prohibited by federal law, the bill would require FTB to truncate SSNs on any record created by FTB that is disclosable under the Public Records Act and expressly includes lien abstracts. SSNs would be required to be truncated by redacting the first five digits of the SSN so that no more than the last four digits of any SSN are displayed.

The bill would require the Secretary of State (SOS) to truncate the SSN on any existing filed document before making it available to the public. The bill would require filing offices to create a "public filing" as defined, of any record filed prior to August 1, 2007, that contains an SSN. Under the provisions of this bill, SOS would be required to provide a financing statement that would not have a space for an SSN to be provided. Filing offices are to post notices on their public websites informing filers not to include SSNs on any portion of their filings. The online system in a filing office cannot contain a field requesting an SSN. After August 1, 2007, a filing office must create a public filing of any official filing that contains an untruncated SSN. An official filing may only be disclosed in response to a subpoena or order of a court of competent jurisdiction.

On the local level, the bill provides legislative intent language that local agencies or filing offices should truncate the SSN on any document required to be made available to the public in order to prevent identity theft.

“Official filing” would mean the permanent archival filing of all instruments, papers, and notices as accepted for filing by a filing office. “Public filing” would mean a filing that is an exact copy of an official filing except that any SSN contained in the copied filing is truncated. The public filing would have the same legal force and effect as the official filing. Truncate means to redact at least the first five digits of an SSN. Truncated SSN means an SSN that displays no more than the last four digits of the SSN.

And, on a county level, except for death records, this bill would establish the Social Security Number Truncation Program within the offices of the county recorder of each county. The program would require the county recorder to create a “public record” version of each “official record” maintained in the county recorder files. A “public record” would be a record that is an exact copy of an official record except that any SSN contained in the copied filing is truncated. An “official record” would be the permanent archival record of all instruments, papers, and notices as accepted for filing by a county recorder.

Creation of public records would be accomplished by recreating the official record in an electronic format and truncating any SSN on the record. This bill would require the county recorder to make only the public record available upon request. The official record would be made available only upon court order or subpoena.

The bill would provide that until the public record version of an official record is created (SSNs are truncated), a request for access to an official record would be permitted. For records recorded from January 1, 1980, through December 31, 2008, the bill would require the recorder to first truncate records that already exist in an electronic format and then create the electronic version of all other records. Each group of records is to be handled in descending chronological order.

For each official filing recorded on or after January 1, 2009, the recorder would be required to create a copy of that filing in an electronic format and truncate any SSN contained in that filing. The recorder would be deemed to be in compliance and have exerted due diligence if an automated program with a high rate of accuracy is used to identify and truncate SSNs in the official filings.

The bill would specify that if the county recorder determines that the fee authorized to fund the truncation program is insufficient to meet the cost of creating the public record version of the official documents, then the recorder would only be required to make public record versions of official documents based on the fraction of documents that would be covered by the fees. For instance, if the recorder determines that the fees charged would only cover 25% of the documents on file, the recorder would only be required to convert 25% of the official documents into public record documents.

This bill would provide that any person may request that a recorder truncate an SSN contained in any public filing. The recorder would be required to truncate that number within ten business days of receiving the request that includes the exact location of the SSN within a specifically identified public filing.

The bill would authorize each county recorder, as approved by that county's board of supervisors, to charge an additional dollar for each page recorded and would limit the use of the funds for purposes of implementing the truncation program. The bill contains additional provisions specific to the process for the county recorder to be able to assess the additional fee that do not impact FTB and are not discussed in this analysis.

This bill would require by January 1, 2009, and annually thereafter, the County Recorders Association to report to the Legislature and the Office of Privacy Protection (OPP) on the progress each county recorder has made in complying with this bill's provisions. When OPP has determined that all counties have completed the requirements of the program, the report would no longer be required.

This bill would establish a task force to review the use of SSNs by post secondary institutions in California. These provisions do not impact FTB and are not discussed in this analysis.

PROGRAM BACKGROUND

The FTB collects personal information from various sources, including from taxpayers and from agencies required to report financial information. This information is used for compliance development, audit, and collection purposes. Federal and state tax laws require that an individual's SSN be used as the identifying number for that individual with regard to income taxes. In every county recorder's office in this state, there are substantial numbers of state tax lien documents that have been recorded in the last 30 years that represent a valid claim against real property held by the individual identified on the lien document. Liens that have been satisfied along with the release document remain in county records and include, among other personal information, a taxpayer's SSN. The lien documents are used to establish rights to property interests and are viewed by title companies and other entities to determine lien priority in comparison to other lien interests or to identify and clear encumbrances on title when property changes hands.

On February 2, 2007, FTB began masking the first five digits of the SSN on lien documents issued by the department. FTB is in compliance with the provisions related to lien documents that would be added by this bill.

LEGISLATIVE HISTORY

AB 703 (Ruskin 2007/2008) would require entities to use an identifier other than an SSN, except as required by federal or state law. This bill was referred to the Assembly Judiciary Committee but was never heard.

SB 216 (Cox, 2007/2008) would require an abstract of judgment to contain only the last four digits of an SSN, but does not contain requirements related to the Judicial Council. This bill was referred to Senate Judiciary Committee but was never heard.

SB 644 (Correa, Stats. 2007, Ch. 189) limits the use of an SSN to only the last four digits of the SSN on an abstract of judgment and other court document ordering a party to pay money.

AB 763 (Lieu, Stats. 2003, Ch. 532) enacted requirements that any SSN that is sent via postal mail may not be printed, in whole or in part, on a postcard or other mailer in which the SSN may be visible from the outside.

SB 25 (Bowen, Stats. 2003, Ch. 907) enacted the current limitations in existence on a state agency's use of SSNs.

AB 1811 (Bogh, 2003/2004) would have prohibited the public posting or displaying of any portion of an individual's SSN with the knowledge that it is a portion of an SSN. This bill was held in the Assembly Judiciary Committee.

FISCAL IMPACT

Implementation of this bill would not impact department costs.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenues.

VOTES

Assembly Floor – Ayes: 75, Noes: 0

Senate Floor – Ayes: 33, Noes: 6

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